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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by Amnesty International, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[18 February 2016]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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The Policing of Public Assemblies*

Amnesty International welcomes the consultation undertaken in recent months by the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions in preparing their joint report to the 31st session of the Human Rights Council on the proper management of assemblies.[1] We look forward to its presentation to the Council. In this statement Amnesty International focuses on the role of law enforcement agencies in respecting and protecting the right of peaceful assembly as guaranteed in Article 21 of the International Covenant on Civil and Political Rights (ICCPR) and Article 20 of the Universal Declaration of Human Rights (UDHR).

Obligations of law enforcement agencies under international human rights law

Law enforcement agencies, as representatives of the state, have the obligation under international law to respect and protect human rights and, regarding the policing of assemblies, in particular the rights to freedom of expression and of peaceful assembly; to life, liberty and security of person; and the right to be free from torture or other cruel, inhuman or degrading treatment or punishment.

This includes the positive duty to enable people to exercise the right of peaceful assembly and not to place restrictions on this right going beyond those permitted under international law. Law enforcement agencies must therefore facilitate assemblies so as to ensure that participants can exercise this right, and should take effective steps to ensure public safety and the right of all to security of person.

In order to ensure that, they should engage in dialogue with organizers,[2] and try to foresee problems and to identify solutions that give due consideration to the rights of all involved. They should use methods of persuasion, negotiation and mediation with a view to peaceful settlement of any conflicts, and should protect participants from any violence or other actions by others attempting to harm them or interfere with their exercise of the right of peaceful assembly. They should only consider the use of force if non-violent means remain ineffective in achieving a legitimate law enforcement objective, or without any promise of doing so.[3]

Law enforcement officials should only resort to force to the extent necessary and proportionate for a legitimate law enforcement objective.[4] They should minimize harm and damage and protect third persons.[5] They must not resort to arbitrary arrest and detention or torture or other ill-treatment of organizers, participants or any other person.[6] They must not use firearms except in defence against an imminent threat to life or of serious injury.[7]

Failure to comply with obligations

Amnesty International is deeply concerned about frequent and serious violations of the rights mentioned above. In too many situations in countries in all geographic regions, state authorities have overly restricted the exercise of the right of peaceful assembly. Too many law enforcement agencies have enforced such restrictions by using excessive force to disperse assemblies or by applying an unnecessarily heavy-handed approach, including arbitrary and excessive use of

* A fuller version of this statement (IOR 40/3463/20116) appears on Amnesty International's website at https://www.amnesty.org/en/documents/ior40/3463/2016/en/.

[1] Joint report of the Special Rapporteurs, A/HRC/31/66.
[2] Special Rapporteur on the rights to freedom of peaceful assembly and of association, A/HRC/20/27 (2012), para. 38.
[3] UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Basic Principles), Principle 4.
[4] Basic Principle 5a.
[5] Basic Principles 3 and 5b.
[6] Article 7 ICCPR.
[7] Basic Principles 14 and 9.

force and arbitrary arrests, and ill- treatment or sometimes even torture. They have used unnecessary force against peaceful protestors, and even when some use of force would have been justified, that used has often been excessive.

- Assemblies have been dispersed by force despite being totally or largely peaceful.
- Tear gas has been used in a disproportionate manner: over wide areas, affecting participants, including peaceful participants, and bystanders alike; where there is no violence or violence by only a few individuals that could be addressed in a different way; or by tear gas canisters fired directly against persons.
- Rubber bullets have been fired randomly at a crowd without distinguishing who may be engaged in violence or not, and without seeking to avoid more serious injury by careful targeting.
- High pressure water cannons have been used even against people who are not engaged in violence at all, sometimes causing serious injury.
- Batons have often been used to disperse peaceful demonstrators or apparently for no other purpose than punishment.
- People have been killed or seriously injured by the use of firearms as a public order tool instead of being limited to situations of defence against an imminent threat of death or serious injury.
- Peaceful demonstrators have been subjected to harassment, arbitrary arrest and detention, and ill-treatment or sometimes even torture.
- In some instances, military forces are deployed in policing assemblies without sufficient training or appropriate equipment for such a task which is quite different from their normal duties.

Such use of force has frequently resulted in serious injuries and deaths.

Impunity for such violations often prevails, for those who have resorted to unlawful use of force, and for those who have failed in their command responsibility through inadequate planning and preparation, inappropriate or unlawful orders, insufficient supervision and control, or who knew or should have known that those under their command were resorting to unlawful acts and did not take all measures in their power to prevent such acts.[8]

Recommendations

Amnesty International urges the Human Rights Council to:

- Express concern about excessive restrictions on the exercise of the right to freedom of peaceful assembly.
- Strongly affirm the obligation of law enforcement officials to respect, protect and facilitate the full enjoyment of this right by all.
- Establish communication, dialogue and peaceful settlement of conflicts as the approach governing the policing of all assemblies.

And to call on states to:

- Repeal or amend any legislation that imposes restrictions on the right to freedom of peaceful assembly beyond those permitted under international law, or permits criminalization of anyone for exercising the right, or that requires organizers to obtain prior authorization for assemblies, and ensure that if the law imposes a prior notification requirement, it permits spontaneous assemblies that have not complied with notification requirements.
- Ensure that law and practice comply with the recommendations on the right of peaceful assembly of the Special Rapporteurs.[9]
- Facilitate the holding of assemblies, including spontaneous assemblies.

[8] See Basic Principle 24.

[9] In particular, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, A/HRC/20/27 (2012), and Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, A/HRC/17/28 (2011).

- Ensure that authorities prepare and plan for assemblies with a view to ensuring the best possible conditions for the exercise of the right of peaceful assembly, and with a view to preventing and avoiding situations where they might need to resort to the use of force.
- Ensure that in policing assemblies the overall approach is based on willingness to engage in dialogue and methods of negotiation and peaceful settlement of conflicts, and that law enforcement authorities consider the use of force only if non-violent means remain ineffective or without any promise of achieving a legitimate law enforcement objective, and only to the extent that is necessary and proportionate to achieving that objective.
- Ensure that authorities do not disperse assemblies simply because the organizers have failed to comply with notification requirements, and do not use force to disperse assemblies merely because they are considered unlawful under national law.
- Ensure that the law and regulations governing the use of force by law enforcement officials prohibit the use of firearms in the dispersal of assemblies or in any other situation except in defence against an imminent threat to life or of serious injury, and prohibit the use of less lethal weapons that carry a risk of causing harm disproportionate to the law enforcement objective.
- Take effective steps to prevent arbitrary arrest and detention, torture or other ill-treatment, or harassment of organizers or participants in assemblies.
- As a general rule, not to deploy military forces for policing assemblies; in exceptional instances where that is not possible, take effective measures to ensure that those forces at all times comply with the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, and carry out their tasks in full respect for human rights, in particular the rights to freedom of peaceful assembly and freedom of expression, and the rights to life, liberty and security of person.
- Fully implement in law, regulations and practice the UN Basic Principles, and in that endeavour to give consideration to the Guidelines for Implementation of the UN Basic Principles developed by Amnesty International for that purpose.[10]
- Ensure full accountability of all officials for actions and omissions that result in violations of human rights in connection with the policing of assemblies, including commanding or superior officers responsible for the planning and preparation of the policing of public assemblies, for orders and instructions given and for supervision and control of those deployed on the ground.

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[10] *Use of Force: Guidelines for the Implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.* Amnesty International, The Netherlands, Police and Human Rights Programme, September 2015, https://www.amnesty.nl/sites/default/files/public/ainl_guidelines_use_of_force.pdf.